THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2003-0839, State of NH v. Joshua Manning, the court on November 9, 2004, issued the following order:

Following a trial on stipulated facts, the defendant, Joshua Manning, was convicted of burglary, see RSA 635:1 (1996), theft by unauthorized taking, see RSA 637:3 (1996), and being a felon in possession of a firearm, see RSA 159:3 (2002). On appeal, he contends that the trial court erred in denying his motion to suppress. We affirm.

The defendant contends that the arresting officer lacked reasonable articulable suspicion specific to the defendant to stop his vehicle. See State v. Turmel, 150 N.H. 377, 380 (2003) (to undertake investigatory stop, police officer must have reasonable suspicion based upon specific articulable facts taken together with rational inferences therefrom that the particular person stopped has been, is, or is about to be engaged in criminal activity). "To determine the sufficiency of the officer's suspicion, we must consider the facts he articulated in light of all the surrounding circumstances, keeping in mind that a trained officer may make inferences and draw conclusions from conduct which may seem unremarkable to an untrained observer." Id.

In this case, the arresting officer testified that he received a call from dispatch at approximately 3:30 a.m. about a burglary in progress less than a mile from his location; he immediately responded to an area where he had regularly patrolled for the last several years; he encountered no traffic until he approached the cul-de-sac on which the burglary was reported where the defendant's vehicle pulled in front of him; the vehicle was old and not typical of the cars in the exclusive neighborhood; because it contained two occupants and because he had not observed any other vehicles at that time of night, he did not believe it was a delivery vehicle; and the back of the vehicle was full of items. Based upon the record before us, we conclude that the arresting officer articulated sufficient facts of a particularized and objective nature from which he could have formed a reasonable suspicion that the defendant had committed the reported burglary. See id. (that observed activity may be consistent with both guilty and innocent behavior does not mean officer must rule out innocent explanations before proceeding). Because the Federal Constitution offers the defendant no greater protection than the State Constitution under these circumstances, we reach the same result under the Federal Constitution as we do under the State Constitution. Id.

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The defendant's remaining argument was not raised in his notice of appeal and has therefore not been preserved for appellate review. State v. Blackmer, 149 N.H. 47, 49 (2003).

Affirmed.

BRODERICK, C.J., DALIANIS, JJ. and GALWAY, concurred.

Eileen Fox,
Clerk

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